

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

## **MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff's motions for leave to proceed *in forma pauperis* ("IFP") (Docs. 60 and 69). Plaintiff has filed a Notice of Appeal with respect to this Court's adoption of the Report and Recommendations of Magistrate Judge Frazier granting summary judgment for Plaintiff's failure to exhaust administrative remedies (Doc. 55). He now wishes to appeal the dispositive order IFP.

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) & (3); Fed. R. App. P. 24(a)(3)(A). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith and not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

The Court has no doubt that Plaintiff is indigent. However, the appeal is frivolous. Defendant was granted summary judgment because the Magistrate Judge found that Plaintiff failed to exhaust his administrative remedies by either skipping a step in the grievance process or

sending his appeals to the Administrative Review Board (ARB) after the 30 day deadline expired (Doc. 54). Plaintiff admitted to reading the prisoner handbook for his institution which clearly states the steps for the grievance process; therefore the grievance process was not “unavailable” to him. Plaintiff has offered no new or compelling arguments in his Notice of Appeal, simply stating that he had followed the instructions of his counselor (Doc. 57). Thus, there are no legal points that are reasonably arguable on their merits.

For the foregoing reasons, Plaintiff’s motions for leave to appeal *in Forma Pauperis* (Docs. 60 and 69) are **DENIED**.

**IT IS SO ORDERED.**

**DATED: November 7, 2016**

s/ Staci M. Yandle  
**STACI M. YANDLE**  
**United States District Judge**